

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
KEY COMMUNICATIONS, LLC, and)	CC Docket No. 94-102
KEYSTONE WIRELESS, LLC)	
)	
For Waiver of Deadlines for Implementation)	
of Phase II E911)	

To: The Commission

**SUPPLEMENT TO PETITION FOR WAIVER OF PHASE II E911
DEADLINES AND STATUS REPORT BY KEY COMMUNICATIONS, LLC**

Key Communications, LLC (“Key”), by its attorneys and pursuant to the Commission’s October 21, 2005 *Order* released in CC Docket No. 94-102^{1/}, hereby supplements the Petition for Waiver of Deadlines for Implementation of Phase II E911 filed jointly by Key and Keystone Wireless, LLC (“Keystone”), on July 15, 2005 (“Waiver Petition”), and submits the status report specified in ¶19 of the *Order*.

In the *Order*, the Commission found that Key failed to adequately show, in the Waiver Petition, a “clear path to full compliance” under the Commission’s Phase II E-911 waiver criteria, and afforded Key an opportunity to augment the record with such a demonstration. *See Order* at ¶17. The Commission also requested that Key file a status report respecting current requests from PSAPs for Phase II E-911 service and Key’s efforts to obtain extensions or agreements to alternative deployment schedules from the requesting PSAPs. *Id.* at ¶19. Key’s Supplement and Status Report are being timely filed within thirty days of the release date of the *Order*.

^{1/} See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver of Deadlines for Implementation of Phase II E911 of Key Communications, LLC and Keystone Wireless, LLC*, CC Docket No. 94-102, *Order*, FCC 05-181, released October 21, 2005 (“*Order*”).

I. Supplement – Demonstration of a Path to Full Compliance

As demonstrated in the Waiver Petition, Key has explored all possible GSM technology E911 solutions for Phase II, including both network-based and hybrid-based solutions, and continues to do so. Key hereby withdraws its commitment to using the TA/NMR solution being developed by Nortel Networks, which is a hybrid network/handset-based solution that works with GSM technology. At the time, this was the only solution that appeared to be a viable solution in Key's rural and mountainous market, which does not lend itself to traditional network-based Phase II solutions. However, as discussed in detail in the Waiver Petition, the handset component of the TA/NMR solution has yet to be developed, and no one has been able to provide Key with a definitive timetable for the development of the required A-GPS handsets. **Therefore, Key is now officially committing to using a network-based solution for Phase II E-911 in its market.** *See* attached Exhibit A, Declaration of Dennis Bloss.

To that end, Key is exploring two new network-based solutions currently being developed, which the developers claim will meet the Commission's Phase II requirements in rural and mountainous or otherwise topographically challenged areas. Key has entered into a written non-disclosure agreement with Polaris Wireless, Inc., and is currently analyzing its E-911 solution called Wireless Location Signature ("Polaris WLS"). Key is reviewing documents received from Polaris that describe the Polaris WLS technology, products and system architectures, including GSM system architectures.^{2/} Also, Key and Polaris are conducting an analysis of Key's network based on the Polaris WLS technology. This analysis could take three months or more to complete. *See* Exhibit A.

^{2/} These documents consist of a Polaris WLS whitepaper and a Polaris WLS product overview. These documents are only attached to the separate "Confidential Materials Submitted in Support of Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911" filed manually of even date herewith ("Confidential Materials Filing"), as Exhibit 1 and Exhibit 2 thereto. As set forth in that pleading, these particular exhibits contain confidential and proprietary commercially-sensitive material belonging to Polaris Wireless, which Key has agreed to keep confidential, and which therefore cannot be made part of the public record.

Additionally, Key recently signed a non-disclosure agreement with GBSD Technologies, Inc. ("GBSD"), and has entered into discussions with GBSD regarding its newly developed E-911 solution, The Compass™ Location System ("The Compass™"), for which GBSD is still awaiting completion of their First Office Application ("FOA"). *Id.* Key is currently reviewing informational materials provided by GBSD and analyzing its E-911 solution.^{3/} Key hopes to conduct an analysis of its network based on The Compass™ technology in the very near future.

Key will commit to utilizing whichever of these two new network-based Phase II E-911 solutions proves viable in rural markets. Assuming that one of these new solutions does prove viable, Key expects that it would be able to implement the Phase II E-911 solution within its network by December 31, 2006. Therefore, this is now Key's target date on its path to E-911 Phase II compliance. Key will keep the Commission advised of its progress with these two potentially viable solutions in future status reports. If neither of these solutions proves viable, Key will advise the Commission accordingly and seek a further extension of the Phase II implementation deadlines at that time.

Furthermore, Key is continuing to add cells to its network, not for the purpose of compliance with the Phase II E-911 requirements, but for the purpose of expanding its coverage in its market. As Key expands its coverage, it is and will continue to reevaluate the other, traditional network-based Phase II solutions that it previously considered, as well as any new network-based stations, to determine if or when any of them become viable solutions for its market. *See* Exhibit A. Key is also continuing to explore potential sources of financing for

^{3/} Copies of this material are only attached to the Confidential Materials Filing as Exhibit 3. This exhibit also contains confidential and proprietary commercially-sensitive material belonging to GBSD, which Key has agreed to keep confidential, and which therefore cannot be made part of the public record. The Compass™ is primarily a network-based solution, but, according to the manufacturer, is capable of being utilized as a hybrid network/handset-based solution, if and when A-GPS handsets ever become available. Unlike the Nortel TA/NMR approach, GBSD claims that The Compass™ will work as a network-based solution, even if A-GPS handsets never become available.

implementation of Phase II E-911, which includes vendor financing from either Polaris Wireless or GBSD Technologies. *Id.*

II. Status Report – PSAP Update

Key has not received any additional Phase I or Phase II PSAP requests beyond the nine requests reported in the Waiver Petition and Key's September 2005 Interim Report. Key is continuing to coordinate its compliance efforts with the requesting PSAPs in its market. Specifically, Key has advised each of the nine requesting PSAPs of the Waiver Request and of the Commission's *Order*. See attached Exhibit B.^{4/} Although Key requested input from the PSAPs, to date Key has received no communications, much less any objections, from any of them. *Id.*; *see, also*, Exhibit A hereto.

Also, neither the WVPSC nor any PSAP has submitted an objection to the Commission respecting the Waiver Petition. Thus, Key must conclude that the WVPSC, to whom the individual PSAPs look for guidance, is satisfied that Key is doing everything commercially reasonable to come into compliance. *See* Exhibit A. Key must also conclude that each of the requesting PSAPs remains satisfied with the sincerity of Key's efforts to achieve full compliance with the Commission's Phase II E-911 requirements.

III. Conclusion

Key has demonstrated in the Waiver Petition, as supplemented hereby, that technological and economic infeasibility warrant grant of the requested waiver of §20.18(g)(1)(v) of the rules in this case. As documented herein and in the Confidential Materials Filing of even date herewith, Key is continuing its efforts to find a network-based solution for deployment of Phase II E-911 in its market. Additionally, Key is continuing to actively pursue financing for deployment of a Phase II E-911 solution in its markets. Finally, as documented herein, Key is

^{4/} The party with whom Key's E-911 Compliance Officer was communicating in Exhibit B, *i.e.*, Dannie Walker, is a Technical Analyst with the West Virginia Public Service Commission ("WVPS") and the statewide coordinator on wireless E-911 implementation. *See* Waiver Petition at p.4; *see also* Exhibit A. As is evident from Exhibit B, Mr. Walker forwarded copies of Key's e-mail communication to most, if not all, of the PSAP directors in the state.

maintaining communications with PSAP officials, to keep them apprised of the status of Key's efforts to implement Phase II E-911. Key submits that this supplemental information demonstrates a clear path to full compliance with the Commission's E-911 Phase II requirements by December 31, 2006.

Respectfully submitted,

KEY COMMUNICATIONS, LLC

By: 

David J. Kaufman
Lorretta K. Tobin

November 21, 2005

Its Attorneys

Brown Nietert & Kaufman, Chartered
1301 Connecticut Ave., N.W., Suite 450
Washington, D.C. 20036
(202) 887-0600

EXHIBIT A
DECLARATION OF DENNIS BLOSS

I, Dennis Bloss, hereby declare under penalty of perjury, as follows:

1. I am the general manager of Key Communications, LLC ("Key"), and I am responsible for implementation and operation of emergency services. This declaration is being submitted in support of Key's "Supplement to Petition for Waiver of Phase II E911 Deadlines and Status Report" ("Supplement"), which I have read. All facts set forth in the Supplement and not susceptible to official notice are true and correct. Without limiting the foregoing, I add the following details.

2. Key has elected to change from a handset-based solution to a network-based solution for its Phase II E-911 deployment, due to the indefinite unavailability of GSM technology A-GPS handsets. Key is currently exploring the viability of two new network-based solutions -- the Wireless Location Signature ("Polaris WLS") being developed by Polaris Wireless, Inc., and The Compass™ Location System ("The Compass™") being developed by GBSD Technologies, Inc. Each manufacturer claims that its network-based solution will meet the Phase II requirements in rural and mountainous areas. Key has entered into non-disclosure agreements with both companies, and is currently in discussions with both concerning their respective network-based solutions. Additionally, Key is currently conducting an analysis of Key's network based on the Polaris WLS technology, which could take three or more months to complete. Key understands that GBSD is still waiting for completion of their First Office Application ("FOA") of The Compass™. We hope to conduct an analysis of Key's network based on The Compass™ technology in the near future. Key will commit to utilizing whichever of these two solutions proves to be viable in Key's market.

3. Key is continuing its efforts to add cells to its network for the purpose of expanding its coverage in its market. As we expand our coverage we are and will continue to reevaluate the network-based solutions we have previously considered, as well as any other new network-based solutions, for viability in Key's market. Also, we are continuing our efforts to obtain financing for Key's deployment of Phase II E-911 and are exploring every potential option. If one of the new network-based solutions discussed above proves viable in Key's market, we intend to discuss the possibility of vendor financing with the manufacturer.

4. Key remains in contact with the requesting PSAPs in its market, and has kept them apprised of its Phase II compliance efforts. Key does not know of any objection filed by any of the requesting PSAPs with the Commission respecting Key's request for a waiver of some of the Phase II compliance deadlines. I have been in contact with the West Virginia Public Service Commission's ("WVPSC") statewide wireless E-911 coordinator, Dannie Walker, and the directors of each local PSAP to advise them as to the most recent ruling by the FCC and update them on our proposed plan to move forward. To date, none of them have raised any concerns or questions about the plan or progress of Key towards this new direction. Thus, Key believes that the WVPSC and requesting PSAPs are satisfied that Key is doing everything commercially reasonable to come into compliance.

Executed November 21, 2005.


Dennis Bloss

Exhibit B

Lorretta Tobin

From: Dennis Bloss [dbloss@pcmgt.com]
Sent: Tuesday, November 15, 2005 3:06 PM
To: Lorretta Tobin
Subject: FW: A MESSAGE FROM WV WIRELESS RE PHASE II



Most Recent
CC Decision (152)

Here is the update sent to the PSAP's in WV. As you notice I ask for their input, concerns, etc. To date, no response from any of them so I assume they are satisfied with our position.

Dennis Bloss
Vice President, PC Management
Immix Wireless
West Virginia Wireless
304-962-0101

-----Original Message-----

From: Walker, Dannie [mailto:DLWalker@psc.state.wv.us]
Sent: Monday, November 07, 2005 10:42 AM
To: wvapco@yahoo.com; barbour@bcnetmail.org; kackley911@aol.com; Jimi204@hotmail.com; bxoes@rtol.net; brenda735@rtol.net; bcsde911@aol.com; salcce911@wirefire.com; joet342@yahoo.com; pbeets@excite.com; lyates@centrale911.com; fcoesdrn@verizon.net; rlsmith@czn.com; grantcooes@citlink.net; gccomm@mountain.net; rharvey911@charter.net; HampshireCo911@frontiernet.net; tay_bong@yahoo.com; hardyeoc@hardynet.com; fsmart@harrco911.org; Pbump@harrco911.org; ropsinwv@yahoo.com; jpolczynski@jeffersoncountywv.org; ccharnock@metro911.org; jsorgman@metro911.org; mbarron@metro911.org; lce911@verizon.net; allen.holder@e911.org; logan.eoc@verizon.net; cledsome@marioncountywv.com; mcc911@ovis.net; masonco_911@charter.net; mcdowell911@citlink.net; mercer911@citlink.net; mcoes@pennswoods.net; lvtac@hotmail.com; lvtac@hotmail.com; faith_911_leonard@yahoo.com; rkyle@mecca911.org; jkd3@earthlink.net; morgancountywv911; whg911@stratuswave.net; dmitchell@access.mountain.net; sbonanno@wvu.edu; tinabutcher@yahoo.com; mtncbill47@yahoo.com; duane@preston911.com; melissa@preston911.com; fchapman@wvnet.edu; raleigh911@charter.net; lyates@centrale911.com; mbise911@verizon.net; gary.steve.lipscomb@charter.net; tuckr911@yahoo.com; crhupp@hotmail.com; upshur911@hotmail.com; donald.williams@verizon.com; karen.saymansky@verizon.com; wwwillis@wayne911.com; weboes@citlink.net; wc911@rcvideo.com; fox4637@cs.com; rlowe@woodcounty911.com; gmccabe@wvsp.state.wv.us; mdebord@wvsp.state.wv.us; dean_meadows7@yahoo.com
Cc: Dennis Bloss
Subject: A MESSAGE FROM WV WIRELESS RE PHASE II

Please note the attachments. - Dannie/WVPSC

Lorretta Tobin

From: Dennis Bloss [dbloss@pcmgt.com]
Sent: Monday, November 07, 2005 9:57 AM
To: Walker, Dannie
Subject: FW: Most Recent FCC Decision

Follow Up Flag: Follow up
Flag Status: Flagged



FCC-05-181
y-Keystone decis

Dannie, Please pass this attachment along to the PSAP Directors in WV who may have an interest in the status of West Virginia Wireless' Phase II process.

As you will see the FCC has asked us to again research a possible solution that is non handset based. While we have extensively done this in the past and have not been able to find any technology that would make us FCC compliant, we are once again contacting all of those companies to take another look. We also are working with two new companies that have emerged recently and are in the process of gaining FCC approval of their technology. If we can find a network based solution that will meet the FCC requirements we will then file an update with the FCC. If we can not find a solution that will meet the current requirements from the FCC then we will have no choice but to either ask the FCC to loosen the accuracy requirements or the percentage of the covered POPS that must meet the accuracy requirements, in order for us to invest money into a system.

As always, any solution must be financially viable for our company in order to be considered. This not only includes the cost of buying the network based solution but the availability and cost of extra space on any tower sites required to deploy. To date, the quotes we have received for network based solutions have been well outside the realm of possibility financially. However, the two new companies claim to have some financial benefits over the companies we have been in contact with in the past. We look forward to their inspection and projections of accuracy based on our network design and a subsequent quote on costs.

I will be sure to keep you posted on the progress. As always, anyone with any questions, feel free to contact me directly.

Sincerely,

Dennis Bloss
Vice President, PC Management
Immix Wireless
West Virginia Wireless
304-962-0101

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	
Compatibility with Enhanced 911 Emergency)	CC Docket No. 94-102
Calling Systems)	
)	
Request for Waiver of Deadlines for)	
Implementation of Phase II E911 of Key)	
Communications, LLC and Keystone Wireless,)	
LLC)	

ORDER

Adopted: October 21, 2005

Released: October 21, 2005

By the Commission:

I. INTRODUCTION

1. In this *Order*, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Key Communications, LLC (Key) and Keystone Wireless, LLC (Keystone) (collectively, Petitioners), Tier III wireless service providers¹ that operate GSM networks in West Virginia and Pennsylvania, respectively.² Specifically, Petitioners request relief from the E911 Phase II service requirements, as well as the presently applicable handset deployment deadlines, contained in Sections 20.18(e) and (g) of the Commission's rules.³

2. Timely compliance with the Commission's wireless E911 rules ensures that the important public safety needs of wireless callers requiring emergency assistance are met as quickly as possible. In analyzing requests for extensions of the Phase II deadlines, the Commission has afforded relief only when

¹ Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

² See Key Communications, LLC and Keystone Wireless, LLC Petition for Waiver of Deadlines for Implementation Phase II E911, CC Docket No. 94-102, filed July 15, 2005 at 1 (Petition). As noted by Petitioners, this Petition was intended to replace an earlier-filed request for relief, submitted June 6, 2005. See Petition at 1 n.1. In support of their request, Petitioners submitted certain information under a request for confidential treatment pursuant to § 0.459 of the Commission's rules. Because this *Order* discusses only that information already made public by Petitioners, we need not rule on Petitioners' request at this time. Until we so rule, we will honor Petitioners' request for confidential treatment. See 47 C.F.R. § 0.459(d)(1).

³ See Petition at 1-2; 47 C.F.R. §§ 20.18(e), (g); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Phase II Compliance Deadlines for Tier III Carriers, CC Docket No. 94-102, *Order*, 20 FCC Rcd 7709, 7756 ¶¶ 127-128 (2005) (*Tier III Carriers Order*) (granting limited relief to Petitioners of the E911 Phase II deployment deadlines).

the requesting carrier has met the standard for seeking a waiver of the Commission's rules.⁴ Where carriers have met the standard, the relief granted has required compliance with the Commission's rules and policies within the shortest practicable time.⁵ Based on the record before us, we find that the Petitioners have not provided sufficient information to warrant a waiver of the Commission's rules. Petitioners have failed to demonstrate a "clear path to full compliance" with our E911 Phase II rules. We therefore cannot grant the Petitioner's waiver request based on the record before us. As Tier III carriers that may face unique circumstances and in light of the totality of the record before us, we will afford Petitioners additional time to augment the record to demonstrate a clear path to full compliance with our E911 rules for the Commission to consider. Without further action on the waiver request, the deadline for compliance with the E911 Phase II requirements will be July 21, 2006.

3. We believe that the Petitioners are the only carriers who are attempting to implement a solution that relies on location-capable GSM handsets, which, despite the efforts of Petitioners, remain unavailable. If this technology remains unavailable, Petitioners must augment the record with a plan to use another technology that is viable. We reiterate that any party seeking a waiver of our E911 rules must demonstrate a clear path to full compliance.

II. BACKGROUND

A. Phase II Requirements

4. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.⁶ Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),⁷ a Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution),⁸ or a combination of location technology in both the network and handsets (a hybrid solution).⁹ Depending on the technology employed, the carrier must identify the location of the caller within certain accuracy and reliability standards.¹⁰ The Commission's

⁴ See *Tier III Carriers Order*, 20 FCC Rcd at 7709-7710 ¶ 1.

⁵ See *id.*

⁶ See 47 C.F.R. § 20.18(e).

⁷ Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3, *Network-based Location Technology*.

⁸ Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3, *Location-Capable Handsets*.

⁹ Hybrid solutions combine network-based equipment with handset-based location technologies to provide more robust methods of determining the location of a caller through the use of multiple inputs. For example, Verizon Wireless has deployed an assisted-GPS (A-GPS) system combined with an advanced forward link trilateration (A-FLT) system. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Request for Waiver by Verizon Wireless*, CC Docket No. 94-102, *Order*, 16 FCC Rcd 18364, 18366, 18370 ¶¶ 8, 17 (2001).

¹⁰ The standards for Phase II location accuracy and reliability are as follows: (1) for network-based technologies, 100 meters for 67 percent of calls, and 300 meters for 95 percent of calls, and (2) for handset-based technologies, 50 meters for 67 percent of calls, and 150 meters for 95 percent of calls. See 47 C.F.R. § 20.18(h).

rules also establish phased-in schedules for both network-based and handset-based location technologies, requiring carriers to deploy any necessary network components and provide Phase II service commencing October 1, 2001, or within six months of receiving a PSAP request, whichever is later.¹¹ Before a wireless licensee's obligation to provide E911 service is triggered, however, the PSAP must make a valid request for E911 service, *i.e.*, be capable of receiving and utilizing the data elements associated with the service and have a mechanism in place for recovering its costs.¹²

5. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based or hybrid solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.¹³ After ensuring that 100 percent of all new digital handsets activated are location-capable, licensees must achieve ninety-five percent penetration among their subscribers of location-capable handsets no later than December 31, 2005.¹⁴

B. Applicable Waiver Standards

6. The Commission has recognized that smaller carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment.¹⁵ Section 1.3 of the Commission's Rules establishes that the Commission may grant relief from its rules for good cause shown.¹⁶ Further, pursuant to Section 1.925(b)(3), the Commission may grant a request for waiver if the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁷

7. Moreover, the Commission previously has stated its expectations for waiver requests of its E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in

¹¹ See 47 C.F.R. §§ 20.18(f), (g)(2).

¹² See 47 C.F.R. § 20.18(j)(1).

¹³ See 47 C.F.R. § 20.18(g)(1).

¹⁴ See 47 C.F.R. § 20.18(g)(1)(v).

¹⁵ See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 ("wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) ("under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and [] relief may therefore be warranted").

¹⁶ See 47 C.F.R. § 1.3.

¹⁷ See 47 C.F.R. § 1.925(b)(3). See *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

support of any waiver requests.”¹⁸ To the extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier’s good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission’s benchmarks.¹⁹ When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.²⁰ A carrier’s justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available Federal, state, or local funding sources.²¹ The Commission also noted that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier’s projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.²²

8. In applying these criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints; small and/or widely dispersed customer bases; and large service areas that are isolated, rural or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.²³ In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

9. Finally, distinct from the Commission’s rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).²⁴ The ENHANCE 911 Act, *inter alia*, directs the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and grant such request for waiver if “strict

¹⁸ Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000) (*Fourth MO&O*).

¹⁹ See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

²⁰ See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

²¹ See *id.*

²² *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

²³ See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-7737 ¶¶ 17, 19, 37, 57, 70.

²⁴ National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

enforcement of the requirements of that section would result in consumers having decreased access to emergency services.”²⁵

C. Request for Waiver

10. Petitioners are Tier III carriers that have sought to deploy a hybrid E911 Phase II location solution throughout their GSM wireless networks, which Petitioners use to provide service to areas that are rural and include mountainous terrain.²⁶ Prior to filing the instant request for waiver, Petitioners were among the Tier III carriers that requested and were granted relief from the handset benchmark deadlines in the *Tier III Carriers Order*.²⁷ In their earlier request for relief, Key and Keystone informed the Commission that they had decided to pursue a hybrid Phase II solution, and that the handset component for their systems was not likely to be available until the third or fourth quarter of 2005.²⁸ In view of this fact, the Commission granted the following extensions of the Phase II handset deadlines: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and (4) from November 30, 2004 until December 31, 2005 to ensure that 100 percent of handsets activated are location-capable.²⁹ Further, because the Commission was extending the deadline for ensuring that 100 percent of all new handset activations are location-capable to December 31, 2005, the Commission afforded the carriers an additional thirteen months from this date to achieve a ninety-five percent handset penetration rate among their subscribers, *i.e.*, until January 31, 2007.³⁰

11. In support of their pending request for relief from the handset deadlines, Petitioners submit that they subsequently learned that the handsets required for the hybrid solution were not in development.³¹ The Petitioners thus contend that they are unable to meet the July 1, 2005 deadline to begin selling and activating location-capable handsets, as prescribed by the *Tier III Carriers Order*.³² In addition, Petitioners note that, even while they were considering the hybrid Phase II technology, they explored alternative, network-based, solutions from two other vendors, TruePosition and Andrew Corporation.³³ The Petitioners also state that they pursued but were unsuccessful in obtaining financing

²⁵ *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a “qualified Tier III carrier” as “a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001.” *Id.* at § 107(b), 118 Stat. 3986, 3991.

²⁶ See Petition at 6-11.

²⁷ See *Tier III Carriers Order*, 20 FCC Rcd at 7756 ¶¶ 127-128.

²⁸ See *id.* at 7755 ¶ 125.

²⁹ See *id.* at 7756 ¶ 127.

³⁰ See *id.* at 7756-57 ¶ 128. The Commission further noted that its decision would not preclude Key and Keystone from seeking additional relief of the handset penetration deadline under the standard articulated in the ENHANCE 911 Act. See *id.* at n.325.

³¹ See Petition at 10.

³² See *id.* at 16.

³³ See *id.* at 8.

and that cost recovery mechanisms are not available in West Virginia and Pennsylvania.³⁴ Furthermore, Petitioners provide accounts of their efforts to apprise the eleven PSAPs, from whom they have received E911 Phase II requests, of their situation.³⁵ Based on all of the foregoing circumstances, Petitioners believe that they have presented evidence sufficient to warrant relief, for an unspecified term, from the currently applicable handset deadlines “and from any corollary requirements, such as location accuracy measures”³⁶ under the Commission’s waiver standards, as well as under the ENHANCE 911 Act.³⁷

III. DISCUSSION

12. As explained more fully below, we conclude that Petitioners have not provided information sufficient to meet the Commission’s well-established criteria for a waiver of its E911 Phase II rules. In particular, Petitioners have failed to show that they have a clear path to full compliance with the Commission’s E911 rules. However, we acknowledge that Petitioners have made efforts to explore location solutions, obtain financing for the required upgrades, and coordinate with the PSAPs in their service territories. Although we cannot grant the Petitioners’ waiver request for failure to meet the “clear path to full compliance” element of the Commission’s waiver standard, we find it appropriate, considering the totality of the circumstances, and consistent with the general policy underlying the ENHANCE 911 Act, to afford the Petitioners additional time in which they may augment the record to address the insufficiencies. We also impose certain conditions and reporting requirements on the Petitioners so that we may monitor progress towards compliance.

13. First, we find that, based on the information provided in the record, Petitioners cannot implement a handset-based location solution unless and until manufacturers develop location-capable handsets for GSM.³⁸ While Petitioners previously anticipated that location-capable handsets would be available this year, and the relief granted by the *Tier III Carriers Order* was so premised, Petitioners report that such handsets are not in fact available.³⁹ As noted in the *Tier III Carriers Order*, “in the event that location-capable GSM handsets remain unavailable, we would expect carriers to actively explore other location technologies in order to achieve Phase II capability.”⁴⁰ To this end, we recognize that the Petitioners have documented efforts to explore alternative E911 Phase II solutions. As noted in the *Tier III Carriers Order*, Petitioners explored a Nortel hybrid solution,⁴¹ but Petitioners now report that, during a conference call held in May 2005, “Nortel simply confirmed that there were no A-GPS handsets in development.”⁴² Petitioners also document efforts to pursue network-based solutions from vendors “claiming to have developed new features that would enable [Petitioners’] systems to work in more rural

³⁴ See *id.* at 8-9.

³⁵ See *id.* at 3-6.

³⁶ See *id.* at 1.

³⁷ See *id.* at 2-3.

³⁸ See *id.* at 6-7.

³⁹ See *id.* at 10.

⁴⁰ *Tier III Carriers Order*, 20 FCC Rcd at 7752 ¶ 116.

⁴¹ Specifically, Petitioners were pursuing a Nortel solution based on Timing Advance/Network Management Report (TA/NMR) technology, which involves a network-based component and deployment of Assisted-GPS (A-GPS) handsets. See *Tier III Carriers Order*, 20 FCC Rcd at 7755 ¶ 125.

⁴² Petition at 10.

areas than before.”⁴³ Specifically, Petitioners state that they obtained proposals from TruePosition and Andrew Corporation.⁴⁴ However, according to Petitioners, neither of these systems would be capable of meeting the Phase II accuracy standards, given the rural nature and topography of Petitioners’ service areas.⁴⁵

14. Petitioners also note that as they were pursuing alternate Phase II solutions, they sought sources of financing. Specifically, Petitioners state that they explored vendor financing and debt funding from the Rural Telephone Bank and the Rural Utility Service. However, vendors were unwilling to provide financing to these Tier III carriers, and debt financing would require lien terms that would not be “realistic” for Petitioners.⁴⁶ They add that West Virginia and Pennsylvania do not currently have cost recovery mechanisms that provide carriers with financial assistance to deploy E911 solutions.⁴⁷ In light of this information, we find that Petitioners have based their claims of financial hardship on “sufficient and specific factual information” and submit documentation demonstrating that they used “best efforts to obtain financing for the required upgrades available from federal, state, or local funding sources.”⁴⁸

15. In addition to addressing efforts to explore Phase II technology solutions, the Commission continually has stressed the importance of carriers seeking waiver relief to coordinate their compliance efforts with PSAPs so that community expectations are in line with anticipated deployment schedules.⁴⁹ The Commission also has emphasized the importance of documenting such efforts as evidence of good faith on the part of carriers.⁵⁰ We find that particularly in cases of unique technical challenges faced by carriers, it is of utmost importance that carriers work with their PSAPs to keep them apprised of their status in meeting requests for Phase II service.

16. Petitioners report that they are in receipt of eleven Phase II requests from PSAPs (nine by Key and two by Keystone).⁵¹ Petitioners add that they have kept these PSAPs informed as to the status of their efforts to implement Phase II service, and that, upon being informed of the instant Petition, “none has indicated any opposition.”⁵² Based on the information provided by Petitioners, the PSAPs appear to

⁴³ *Id.* at 8.

⁴⁴ *See id.* Petitioners attached under their request for confidential treatment the TruePosition proposal and materials provided by Andrew Corporation.

⁴⁵ *See id.* Petitioners state that TruePosition’s equipment would not “come anywhere close to meeting the Phase II E911 location accuracy standards,” since Petitioners’ systems are “just too rural, and not susceptible to a network-based Phase II solution” and that Andrew Corporation never provided a price quote since the vendor apparently concluded that its “technology cannot be designed to achieve Phase II accuracy levels, given the rural nature of [Petitioners’] networks.” *Id.* Elsewhere, Petitioners reference the “mountainous terrain which characterizes [West Virginia],” and their “rural, and partly mountainous areas.” *Id.* at 4, 6.

⁴⁶ *See id.* 8-9. Petitioners submitted the term sheet proposed by RUS as part of their confidential filings.

⁴⁷ *See id.* at 9.

⁴⁸ *See Order to Stay*, 18 FCC Rcd at 20997 ¶ 29.

⁴⁹ *See id.* at 20997 ¶ 28.

⁵⁰ *See id.*

⁵¹ *See* Petition at 3.

⁵² *See id.* We also note that the Commission has not received any objections from the public safety community with respect to the instant Petition.

be aware of the particular technology and terrain issues faced by Petitioners,⁵³ and some PSAPs have granted further extensions of the compliance date.⁵⁴ Petitioners also invited all PSAPs in West Virginia to an informational meeting, and sent written materials following the meeting to those PSAPs that did not attend.⁵⁵ We find that Petitioners thus have adequately documented efforts to work closely with the PSAPs to explain their situation and seek their cooperation.

17. We find, however, that Petitioners have not adequately shown the “clear path to full compliance” element under the Commission’s Phase II waiver criteria.⁵⁶ While we appreciate Petitioners’ efforts to explore other Phase II location solutions, Petitioners’ request for relief is open-ended. Petitioners have not provided specifics regarding their plans in the event that location-capable GSM handsets remain unavailable. Petitioners only have made generalized claims that the alternate technologies they have explored to date would not achieve the required Phase II accuracy levels.⁵⁷ We require more specific information concerning what exactly would be necessary in order for Petitioners to deploy a location solution that would satisfy the Commission’s Phase II requirements. Petitioners have failed to demonstrate a clear path to full compliance because it is currently unclear whether or when location-capable GSM handsets will become available. However, because Petitioners have undertaken efforts in the past to explore the viability of other location solutions, demonstrated attempts to secure funding sources, and made efforts to coordinate with the PSAPs in their service areas, and consistent with the general policy underlying the ENHANCE 911 Act, we will afford Petitioners additional time in which they may augment the record to try to demonstrate a clear path to achieving full compliance with our E911 Phase II requirements.⁵⁸

18. Specifically, as part of its demonstration of a path to full compliance, Petitioners must provide the Commission the following: (1) evidence of Petitioners’ continued efforts, as required under the *Tier III Carriers Order*, to explore technical solutions “[i]n the event that location-capable GSM handsets remain unavailable,”⁵⁹ and (2) commitment to a definitive, viable location technology or technologies, whether handset-based, network-based, or both.⁶⁰ In addition, to the extent that Petitioners

⁵³ See *id.* at 3-4, 6 and Exhibit A-5.

⁵⁴ See *id.* at 3 (Cabell County, West Virginia), 4 (Mercer County, West Virginia).

⁵⁵ See *id.* at 4 n.3.

⁵⁶ See *supra* ¶ 7 (citing *Fourth MO&O*, 15 FCC Rcd at 17458 ¶ 44).

⁵⁷ See *supra* note 45.

⁵⁸ See *Tier III Carriers Order*, 20 FCC Rcd at 7755 ¶ 124. We note that Petitioners make only passing reference to the ENHANCE 911 Act standard for relief. See *id.* at 2-3. Thus, it is unclear whether Petitioners are requesting relief under the ENHANCE 911 Act. In any event, as explained herein, we are affording Petitioners additional time to demonstrate a clear path to achieving full compliance with the Commission’s E911 rules.

⁵⁹ *Id.* at 7752 ¶ 116.

⁶⁰ We note that the Commission has previously conditioned relief based on the need to timely identify alternative E911 technology solutions in the event that prior selection(s) proved inadequate. See *Fourth MO&O*, 15 FCC Rcd at 17463-64 ¶¶ 61-68 (establishing a series of benchmarks for deployment of location-capable handsets, the first of which was approximately one year after release of the order, and stating that VoiceStream would be expected to use another ALI methodology that comports with the Commission’s requirements in the event the carrier’s location solution proved infeasible). See also *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Request for Waiver by AT&T Wireless Services, Inc., CC Docket No. 94-102, *Order*, 16 FCC Rcd 18253, 18262 ¶ 30 (2001); *Revision of the Commission’s Rules* (continued....)

select a handset-based Phase II location technology or technologies, Petitioners must each provide in their individual filings a specific, targeted schedule for meeting the handset-based activation and subscriber penetration requirements specified in the Commission's Rules.⁶¹

19. Finally, to ensure that Petitioners remain responsive to valid requests for Phase II service by the PSAPs within their service areas, Petitioners must comply with the following conditions:

- Each Petitioner must separately file, within thirty days following release of this *Order*, a status report of the current requests for Phase II service and efforts to secure extensions or agreements to alternative deployment schedules from each of the PSAPs.
- Each Petitioner must separately file status reports every February 1, May 1, August 1, and November 1 thereafter, until two years following release of this *Order*,⁶² which shall include the following information: (1) the number of Phase I and Phase II requests received from PSAPs (including those that Petitioners may consider invalid) and the status of those requests, including whether Petitioners and the PSAP have reached an alternative deployment date; (2) the anticipated date on which Phase II service was/will first be available; and (3) progress made in constructing new cells sites and expanding wireless service coverage.

IV. CONCLUSION

20. For the foregoing reasons, we cannot grant Petitioners' waiver request. We will, however, give the Petitioners additional time to augment the record with information that shows a clear path to full compliance with the E911 Phase II rules for the Commission's consideration. We also impose conditions and reporting requirements, contained herein, on the Petitioners in order to monitor progress toward compliance. Without further action on the waiver request, the deadline for compliance with the E911 Phase II requirements will be July 21, 2006. We reiterate that any party seeking a waiver from our E911 rules must demonstrate a clear path to full compliance.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED, pursuant to Sections 1.3 and 1.925 of the Commission's rules, that the foregoing *Order* IS ADOPTED.

22. IT IS FURTHER ORDERED that an extension of time IS GRANTED to the Petitioners to augment the record for the Request for Waiver of Deadlines for Implementation of Phase II E911 of Key Communications, LLC and Keystone Wireless, LLC (Waiver Request).

23. IT IS FURTHER ORDERED that the Petitioners are subject to the conditions and reporting requirements contained herein.

(Continued from previous page) _____

To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless, LLC, CC Docket No. 94-102, *Order*, 16 FCC Red 18305, 18315 ¶ 30 (2001).

⁶¹ See 47 C.F.R. § 20.18(g)(1).

⁶² We note that we are requiring Petitioners to file status reports beyond the nine months following release of this *Order* by which we otherwise require Petitioners to become compliant with the Phase II requirements. We believe that it is important to continue monitoring Petitioners' E911 deployment progress for an additional fifteen months beyond this compliance deadline.

24. IT IS FURTHER ORDERED that, without further Commission action on the Waiver Request, the deadline for the Petitioners' compliance with the Commission's Phase II E911 rules will be July 21, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary